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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

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|---|---|
| In re: 72ND AVENUE PROPERTY, LLC, Debtor. | Chapter 11 Case No. 24-31211-pcm11 PARKVIEW FINANCIAL' S MOTION FOR ORDER EXCUSING RECEIVER TURNOVER OBLIGATION UNDER 543(A)&(B) |
|---|---|

I. MOTION

1. Under section 543(d) of the Bankruptcy Code, secured creditors Parkview Financial REIT, LP and Parkview Financial Fund 2020, LP (collectively, "Parkview"); respectfully move this Court ("Motion") for the entry of an order excusing Cobalt Properties Group LLC, dba Cobalt Properties Management Group, the duly appointed receiver in the state court action, *Parkview Financial REIT, LP, et al. v. 72nd Avenue Property LLC*, Multnomah County Case No. 23CV46660 (the "Receiver") from the turnover obligations in sections 543(a) and 543(b) of the Bankruptcy Code and allowing the Receiver to remain in possession and continue to perform its duties under the Receivership Order (as defined below), subject to and to the extent it does not conflict with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

1 of the Deed of Trust is attached to the Hiller Decl. as Exhibit 2.

2 10. In addition to the aforementioned documents, Debtor also executed and delivered
3 to Parkview a Collateral Assignment of Membership Interest and Security Agreement dated
4 December 22, 2021; Environmental Indemnity Agreement dated December 22, 2021; and other
5 loan documents related to the forgoing (collectively, with the Loan Agreement, Note, and Deed
6 of Trust, the “Parkview Loan Documents”). [Hiller Decl., ¶5.]

7 11. Under the Parkview Loan Documents, Debtor was obligated to pay the Parkview
8 Loan in full on or before December 22, 2022. Debtor failed to do so. As a result, Parkview
9 instituted a nonjudicial foreclosure of the Deed of Trust, scheduling a sale for June 2, 2023.
10 [Hiller Decl., ¶6.]

11 12. Following Parkview’s initiation of the nonjudicial foreclosure of the Deed of
12 Trust, Avatar Portland Commercial LLC, a Delaware limited liability company (“Avatar”), made
13 a loan to Debtor in the original principle amount of \$11,250,000.00 (the “Avatar Loan”).
14 Although the proceeds from the Avatar Loan were insufficient to pay the outstanding balance on
15 the Parkview Loan, Parkview consented to the Avatar Loan and released its Deed of Trust on the
16 Property in exchange for Debtor making a principal reduction payment of \$10,746,619.92
17 against the outstanding balance of the Parkview Loan, and executing a new Deed of Trust over
18 the Property, subordinate to Avatar’s Deed of Trust securing the Avatar Loan (the “Subordinate
19 Deed of Trust”). On or about February 15, 2023, Parkview and Debtor executed a First
20 Amendment to Loan Documents, memorializing the conditions set forth above. [Hiller Decl., ¶7;
21 Cronin-Prather Decl., ¶3.] Copies of the Subordinate Deed of and the First Amendment are
22 attached the Hiller Decl. as Exhibits 3 and 4, respectively.

23 13. Under Section 9 of the First Amendment, an Event of Default under the Parkview
24 Loan would occur if Debtor defaulted on the Avatar Loan. [Hiller Decl., Ex. 4.]

25 14. Under the First Amendment, the maturity date of the Parkview Loan was
26 extended to May 31, 2023. On or about May 31, 2023, Parkview and Debtor executed a Second

1 Amendment to Loan Documents, whereby the parties further extended the maturity date of the
2 Parkview Loan to September 29, 2023. On or about September 21, 2023, Parkview and the
3 Debtor executed a Third Amendment to Loan documents, whereby the parties further extended
4 the maturity date of the Parkview Loan to December 31, 2023, which is the current deadline for
5 Debtor to pay all amounts owed under the Parkview Loan. [Hiller Decl., ¶8.]

6 15. Under Section 3.1 of the Subordinate Deed of Trust, the Debtor conveyed to
7 Parkview an interest in, and the right to, all rents collected from the Property. Under that section,
8 Debtor was granted a limited right and license to collect rents from the Property, but such right
9 and license terminates upon an Event of Default, which has occurred as a result of Debtor's
10 default of the Avatar Loan. Under the absolute assignment in Section 3.1 of the Subordinated
11 Deed of Trust, Debtor no longer has the right to collect any rents from the Property. [Hiller
12 Decl., Ex. 3.]

13 16. Under Section 4.3(c) of the Subordinate Deed of Trust, Debtor agreed that upon
14 an Event of Default, Parkview has the right, among other rights, to the appointment of a receiver
15 to take possession of the Property and collect rents. *Id.*

16 17. In connection with the obligations under Section and Schedule 9.22 of the Avatar
17 Loan Agreement, Debtor executed Amendment No. 1 to Operating Agreement of 72nd Avenue
18 Property LLC (the "Operating Agreement Amendment"), whereby Debtor amended its
19 Operating Agreement to require the appointment and maintenance of an Independent Director or
20 Manager, as defined in Schedule A to the Amendment, which mirrors Schedule 9.22 of the Loan
21 Agreement. [Cronin-Prather Decl., ¶¶12–14.] A copy of the Operating Agreement Amendment is
22 attached as Exhibit 5 to the Cronin-Prather Decl.

23 18. In connection with the Avatar Loan, Parkview and Avatar executed an
24 Intercreditor Agreement, setting forth Avatar's and Parkview's respective rights and obligations
25 regarding their loans to Debtor and the Property. Under the Intercreditor Agreement, Parkview
26 has agreed to maintain the Avatar Loan by making monthly interest-only payments in the

1 approximate amount of \$92,000, to prevent Avatar from commencing its own foreclosure.
2 Parkview must continuing making such monthly payments to ensure that Avatar does not
3 proceed with its own foreclosure which, if successful, would foreclose out Parkview's interest in
4 the Property. [Hiller Decl., ¶11.; Cronin-Prather Decl., ¶11.]

5 19. Debtor failed to make the loan payments due on the Avatar Loan on September 1
6 and October 1, 2023. Beginning on November 1, 2023, Parkview began paying the monthly
7 payments due under the Avatar Note under the parties' Intercreditor Agreement. Debtor failed to
8 pay any amounts to Avatar in September, October, or November 2023, even though the Debtor
9 was collecting rents from the Property. [Cronin-Prather Decl., ¶11.]

10 20. On or about October 9, 2023, Ryan Cronin-Prather of Avatar sent a letter to
11 Debtor informing it that it was in default of the Avatar Loan for failing to make the monthly loan
12 payments for September and October 2023, and for failing to pay default interest and late
13 charges (the "Avatar NOD"). Under the Avatar NOD, Debtor was given until October 16, 2023,
14 to cure the default, which Debtor did not do. As a result, Debtor committed an Event of Default
15 under the Avatar Loan Documents. [Cronin-Prather Decl., ¶9.] A copy of the Avatar NOD is
16 attached to the Cronin-Prather Decl. as Exhibit 4.

17 21. In early October 2023, Debtor's sole member and manager Richard Cassinelli
18 participated in a telephone call with Mr. Cronin-Prather, Avatar's counsel, and Parkview's
19 counsel, during which Mr. Cronin-Prather asked Mr. Cassinelli why Debtor had not made the
20 payments on the Avatar Loan which were due in September and October 2023, and more
21 particularly, what Debtor had done with the net operating income ("NOI") from the Property for
22 those months. In response, Mr. Cassinelli was unable to specifically state what was done with the
23 NOI but he did state that he had used some of the NOI for his "personal expenses." [Cronin-
24 Prather Decl., ¶10.]

25 22. As a result of Debtor's default of the Avatar Loan, on or about October 23, 2023,
26 Parkview sent Debtor a Notice of Default and Demand to Pay (the "Parkview NOD"), informing

1 Debtor that it was in default of the Parkview Loan as a result of Debtor's default of the Avatar
2 Loan. [Hiller Decl., ¶10.] A copy of the Parkview NOD is attached to the Hiller Decl. as Exhibit
3 6.

4 23. As a result of Debtor's default under the Subordinate Deed of Trust, Parkview
5 moved for the appointment of the Receiver to take possession of the Property, manage any
6 business thereon, and collect any rents derived from the Property. On November 28, 2023 the
7 Receiver was appointed as receiver with respect to the Property pursuant to the Order Appointing
8 Receiver ("Receivership Order") entered by the Circuit Court of Oregon, County of Multnomah
9 ("State Court"). [Buccola Decl., ¶2.] A copy of the Receivership Order is attached as Exhibit 1 to
10 the Buccola Decl.

11 24. Upon the entry of and in compliance with the Receivership Order, the Receiver
12 demanded that Debtor transfer its books and records to the Receiver, but Debtor failed to do so
13 until several weeks had elapsed and only after multiple communications between the Receiver's
14 counsel and Debtor's counsel. [Buccola Decl., ¶4.] Copies of the correspondence the Receiver's
15 counsel sent to Mr. Cassinelli's counsel regarding the Receiver's request for books and records
16 associated with the Property are attached as Exhibits 1–7 to the Buccola Decl.

17 25. Debtor's eventual transfer of some books and records to the Receiver included
18 Debtor's profit and loss statement for the Property from January through November of 2023
19 ("2023 P&L"). [Buccola Decl., ¶5.] A copy of the 2023 P&L is attached as Exhibit 8 to the
20 Buccola Decl.

21 26. According to the 2023 P&L, between September and November of 2023, the
22 Debtor received \$222,588.80 in rent from the Property, but upon gaining access to the Debtor's
23 deposit accounts, the balance was only \$26,455, and Debtor never accounted for the rents
24 received from the Property for September through November 2023. [*Id.*]

25 27. After its appointment as receiver, the Receiver discovered that Debtor had not
26 been segregating tenant security deposits in a separate account as is required by Oregon law,

1 forcing the Receiver to establish such a separate account and fund it from rental income for
2 December 2023 and onwards. Mr. Cassinelli did not provide an explanation for this
3 noncompliance with applicable law when asked by the Receiver. [Buccola Decl., ¶6.]

4 28. In the months following the appointment of the Receiver, Mr. Cassinelli often
5 interfered with the Receiver's operations of the Property. This interference including sending a
6 message to the Property's tenants on December 14, 2023 stating that within the next month or
7 two the Receiver would be removed as receiver and that Mr. Cassinelli would "regain
8 management control again." [Buccola Decl., ¶7.] A copy of the December 14, 2023 message to
9 tenants is attached as Exhibit 9 to the Buccola Decl.

10 29. In January of 2023, Mr. Cassinelli further interfered with the Receiver's
11 management of the Property by entering one of the tenant's units without consent, under the
12 guise of having to make a repair, even though Mr. Cassinelli had no authority to take any action
13 on behalf of the Debtor or the Receiver, which resulted in the tenant demanding to be released
14 from its lease and vacating the Property, and exposed Debtor to a potential claim for violation of
15 Oregon's Residential Landlord Tenant Act. [Buccola Decl., ¶8.]

16 30. Upon the closing of the Avatar loan, Michelle A. Dreyer of CSC Global became
17 the Independent Manager under Debtor's organizational documents. On March 17, 2024, months
18 after the appointment of the Receiver over the Debtor's property, Mr. Cassinelli, purportedly
19 acting on behalf of the Debtor, terminated Ms. Dreyer as the Independent Member of Debtor and
20 replaced her with Devin Stone of Stone Mountain Capital. [Cronin-Prather Decl., ¶17.]

21 31. In the face of Mr. Cassinelli's delays and interference, as well as a challenging
22 lease market for multi-family properties, the Receiver has diligently managed the Property since
23 its appointment as receiver, including—in addition to general maintenance and collection of
24 rents—aggressive marketing of available units to potential renters across more than two dozen
25 platforms, and quickly and appropriately responding to an incident in January 2024 where cold
26 weather caused the freezing and bursting of some pipes in the Property. [Buccola Decl., ¶¶9–12.]

32. On April 30, 2024 (“Petition Date”), Debtor filed a voluntary bankruptcy petition under subchapter V of chapter 11 of the Bankruptcy Code. [Dkt. 1.]

33. On the Petition Date, Debtor filed an Application for Employment of Attorneys for Debtor in Possession, which describes Debtor’s transfer of a total of \$40,000 to its proposed bankruptcy counsel in February and March 2024.¹ [Dkt. 4.]

IV. APPLICABLE LAW

34. Sections 543(a) and 543(b) of the Bankruptcy Code describe the obligations of a custodian of a debtor’s property upon the commencement of a bankruptcy proceeding, including refraining from administering a bankruptcy debtor’s property “except as such action as is necessary to preserve such property” and delivering the debtor’s property to the bankruptcy trustee or debtor-in-possession, as applicable.

35. Section 543(d)(1) of the Bankruptcy Code provides: “After notice and hearing, the bankruptcy court . . . may excuse compliance with subsection (a), (b), or (c) of this section if the interests of creditors and, if the debtor is not insolvent, of equity security holders would be better served by permitting a custodian to continue in possession, custody, or control of such property.”

36. In evaluating a motion under section 543(d)(1), “courts consider a number of factors in determining whether to order turnover, including ‘(1) whether there will be sufficient income to fund a successful reorganization; (2) whether the debtor will use the property for the benefit of its creditors; and (3) whether there has been mismanagement by the debtor.’” *In re Orchards Vill. Invs., LLC*, 405 B.R. 341, 353 (Bankr. D. Or. 2009) (quoting *Dill v. Dime Savings Bank, FSB (In re Dill)*, 163 B.R. 221, 225 (E.D.N.Y. 1994)).

¹ The application for employment states that these transfers were made in February and March 2025, but it is evident from the timeline and context therein that 2024 was meant.

1 V. **DISCUSSION**

2 37. Applying the *Orchards Village* factors to the circumstances before the court tilts
3 strongly in favor of allowing Receiver to continue possessing and exercising control over the
4 estate's property.

5 A. **Debtor's Mismanagement**

6 38. Prior to the appointment of the Receiver, the operations of Debtor were
7 characterized by severe and pervasive mismanagement.

8 39. Debtor's failure to establish and maintain a separate deposit account for the
9 security deposits of the Property's tenants is a serious violation of landlord-tenant law that
10 clearly establishes mismanagement. ORS 296.241; OAR 863-025-0025. *See, e.g., In re WPAS,*
11 *Inc.*, 6 B.R. 40, 44 (Bankr. M.D. Fla. 1980) ("total disregard" of applicable law and "cavalier
12 manner" of handling financial affairs establishes mismanagement).

13 40. Moreover, Mr. Cassinelli's inability to account for or turn over to Cobalk
14 Debtor's NOI from rents collected for the months of September through November 2023 and his
15 admission that at least some of these funds were used on "personal expenses" further establishes
16 mismanagement sufficient to excuse the Receiver from complying with section 543(b). *See In re*
17 *Falconridge, LLC*, No. 07-bk-19200, 2007 Bankr. LEXIS 3755 at *26 (Bankr. N.D. Ill. Nov. 8,
18 2007) (debtor's failure to account for income prior to receivership is "evidence of continued
19 mismanagement and questionable business practices that warrant [receiver] being excused from
20 complying with § 543(b)"); *In re Orchards Vil. Invs., LLC*, 405 B.R. at 353–54 (excusing
21 receiver from turnover after determining that Debtor's failure to pay secured lender or property
22 taxes while disbursing funds to equity holders was mismanagement).

23 B. **Interference with the Receivership**

24 41. Mr. Cassinelli's reactions to the appointment of the Receiver as receiver provide
25 further evidence that the Receiver's continued possession and operation of the Property are in the
26 best interests of the creditors. *See In re Wallace*, No. 11-21077-TLM, 2011 Bankr. LEXIS 4382

1 at *32 (Bankr. D. Idaho Nov. 18, 2011) (court was “not convinced Debtors will use the rental
2 income from the properties for the benefit of their creditors” due to Debtors’ “general disregard”
3 for its obligations).

4 42. In particular, Debtor’s delayed transfer of its books and records to the Receiver,
5 and its non-transfer (and possible retention) of the rental income from September to November
6 2023 in defiance of the Receivership Order, raise serious questions of whether or how
7 completely the Debtor would comply with any future order to turn assets of the estate over to a
8 chapter 11 trustee (should one be appointed) or a chapter 7 trustee upon conversion.

9 43. Finally, Mr. Cassinelli’s purported removal of Ms. Dreyer as Independent
10 Manager of Debtor without following the procedures for replacement of the independent
11 manager in Debtor’s operating agreement, including providing inadequate notice and not
12 allowing Avatar an opportunity to approve the replacement, is further evidence of Debtor’s
13 unwillingness to operate the Property for the benefit of its creditors.

14 44. Accordingly, to avoid the risk of Debtor operating the Property at the expense of
15 its creditors and to foreclose the possibility of Debtor refusing to comply or frustrating any future
16 order regarding turnover of the Property to a trustee, the Receiver should be excused from
17 turning over the Property to Debtor.

18 **C. The Receiver’s Able and Diligent Management**

19 45. In contrast to Debtor’s mismanagement, the Receiver’s operation of the Property
20 has been able and diligent since its appointment as receiver over the Property. *See Buccola Decl.*,
21 ¶¶9–12.

22 46. Accordingly, the Receiver’s continuation in that role is in the best interests of
23 Debtor’s creditors. *See, e.g., In re Sundance Corp.*, 83 B.R. 746, 749–50 (Bankr. D. Mont. 1988)
24 (holding that best interests of chapter 11 debtor’s creditors were served by permitting receiver to
25 continue in possession of when such receiver had ably operated debtor’s property).

26

1 **VI. CONCLUSION**

2 47. Parkview respectfully submits that the Receiver's able performance in its role as
3 the safeguard and custodian of the assets and operations of the Property since its appointment as
4 receiver, combined with Debtor's mismanagement of the Property prior to the appointment and
5 its interference with the management of the Property upon and after the appointment, strongly
6 support a finding that the best interests of the creditors are served by excusing Cobalt's
7 compliance with sections 543(a) and 543(b) of the Bankruptcy Code during the pendency of this
8 case, and allowing the Receiver to remain in possession and continue to perform its duties under
9 the Receivership Order (as defined below), subject to and to the extent it does not conflict with
10 the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

11 Dated this 6th day of May, 2023.

12 SCHWABE, WILLIAMSON & WYATT, P.C.

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20 *Of Attorneys for Parkview Financial REIT,*
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22
23
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26

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 6th day of May 2024, I caused to be served the PARKVIEW
3 FINANCIAL' S MOTION FOR ORDER EXCUSING RECEIVER TURNOVER
4 OBLIGATION UNDER 543(A)&(b); NOTICE OF HEARING ON PARKVIEW FINANCIAL'
5 S MOTION FOR ORDER EXCUSING RECEIVER TURNOVER OBLIGATION UNDER
6 543(A)&(B); DECLARATION OF ALAN HILLER; DECLARATION OF RYAN CRONIN-
7 PRATHER; and DECLARATION OF GENE D. BUCCOLA on the following party at the
8 following address:

9 by: ☒ **electronic service (ECF):**

- 10 • THEODORE J PITEO on behalf of Debtor 72nd Avenue Property, LLC:
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